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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/644,431	08/20/2003	Herman D. D'Hooge	ITL.0415D1US (P6930D)	6993

7590 01/11/2006

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EXAMINER

NGUYEN, THONG Q

ART UNIT	PAPER NUMBER
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2872

DATE MAILED: 01/11/2006

Please find below and/or attached an Office communication concerning this application or proceeding.

Office Action Summary	Application No.	Applicant(s)	
	10/644,431	D'HOOGE ET AL.	
	Examiner	Art Unit	
	Thong Q. Nguyen	2872	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --
Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 24 May 2005.
- 2a) ☒ This action is **FINAL**. 2b) ☐ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 18-25 and 31-35 is/are pending in the application.
- 4a) Of the above claim(s) 22-24 is/are withdrawn from consideration.
- 5) ☒ Claim(s) 18-21, 34 and 35 is/are allowed.
- 6) ☒ Claim(s) 25 is/are rejected.
- 7) ☒ Claim(s) 31-33 is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on _____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
 2. ☐ Certified copies of the priority documents have been received in Application No. _____.
 3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- | | |
|---|---|
| 1) <input type="checkbox"/> Notice of References Cited (PTO-892) | 4) <input type="checkbox"/> Interview Summary (PTO-413) |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948) | Paper No(s)/Mail Date. _____ |
| 3) <input type="checkbox"/> Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08) | 5) <input type="checkbox"/> Notice of Informal Patent Application (PTO-152) |
| Paper No(s)/Mail Date. _____ | 6) <input type="checkbox"/> Other: _____ |

DETAILED ACTION

Response to Amendment

1. The present Office action is made in response to the amendment filed by applicant on 5/24/2005. It is noted that since the amendment contains an incorrect serial number, i.e., 10/664431, and thus the amendment has not been entered into the correct application until a telephonic conversation between the Examiner in charge of the present application and the applicant's representative, Rhonda L. Sheldon. The incorrect serial number appeared on the amendment is now changed to --10/644,431-- and the amendment is now entered into the present application.
2. In the amendment, applicant has made changes to the specification and the claims. Regarding to the claims, applicant has amended claims 18 and 21 and added new dependent claims 31-35 into the application. As a result, the pending claims are claims 18-25 and 31-35 (Note: Claims 1-17 and 26-30 were canceled by applicant in the pre-amendment of 8/20/2003) in which claims 22-24 are non-elected claims. Claims 18-21, 25 and 31-35 are examined in this Office action.

Claim Rejections - 35 USC § 103

3. The text of those sections of Title 35, U.S. Code not included in this action can be found in a prior Office action.
4. Claim 25 is rejected under 35 U.S.C. 103(a) as being unpatentable over Bawolek in view of Seok et al (U.S. Patent No. 5,909,950) (both of record).

Bawolek discloses a microscope having an illuminating system and an image unit for receiving and analyzing the image of an object illuminated by the illuminating

system. The microscope as described in columns 1-3 and shown in figs. 1-4 comprises the following structures: An illuminating system having two light sources (40, 42) whose operation is controlled by an interface (44) or a switch (23) wherein one of the light source is ON while the other is OFF based on a particular illumination pattern; an image unit having digital elements for receiving the image of an object (38) illuminated by a particular light source wherein the output of the image unit is guided to a computer system for the purpose of analyzing the optical feature of the object. It is noted that the color of the image unit is adjusted via a system having computer and mouse for the purpose of balancing the color. See column 3.

The only feature missing from the microscope provided by Bawolek is that he does not clearly disclose the use of a detector for detecting the ON or OFF state of a light source. However, the use of a switching system having a detector for detecting whether a light source is ON or OFF is known to one skilled in the art as can be seen in the switching system provided by Seok et al. In particular, Seok et al disclose a switching system connecting to a light source and a detector wherein the detector is used to show the status of the light source on the basis of a switching operation. See columns 1-3. Thus, it would have been obvious to one skilled in the art at the time the invention was made to utilize a switching system having a detector for detecting the status of a light source as suggested by Seok et al for the purpose of informing a user the ON or OFF

status of a light source in a system to avoid the confusion to a user of a system in use.

Allowable Subject Matter

5. Claims 18-21 and 34-35 are allowed.
6. Claims 31-33 are objected to as being dependent upon a rejected base claim, but would be allowable if claim 31 is rewritten in independent form including all of the limitations of the base claim and any intervening claims.
7. The following is a statement of reasons for the indication of allowable subject matter:

The method as claimed in claim 18 and the apparatus as recited in claim 31 are patentable with respect to the cited art by the limitations related to the feature related to the arrangement of the imaging unit and the base supporting the imaging unit wherein the imaging unit is removable from the base and the system comprises a detector for detecting the ON/OFF state of the light associated with the removably imaging unit with respect to the base. While the use of a microscope having a base for removably supporting an image unit is known to one skilled in the art; however, the cited art does not disclose a method for detecting the on/off state of a first light source associated with an image unit and a second light source associated with a base removably supporting the image unit which method comprises the step of setting a color balance of the imaging unit based on the analysis of the image, the on/off of at least one light source and the nature of the light as claimed.

Response to Arguments

8. Regarding to the rejections of claims 18-19 under 35 USC 103(a) over the art of Leiter and the rejection of claims 18 and 30 under 35 USC 103(a) over the art of Bawolek, the amendment to the claim 18 by adding the limitation of dependent claim 21 into the claim 18 is sufficient to overcome the rejections, and thus those rejections are now withdrawn.

Regarding to the rejection of claim 25 under 35 USC 103(a) over the combination of art provided by Bawolek and Seok et al, applicant's arguments filed on 5/24/05, page 6, the third full paragraph have been fully considered but they are not persuasive.

In response to applicant's argument that the art of Seok et al is nonanalogous art, it has been held that a prior art reference must either be in the field of applicant's endeavor or, if not, then be reasonably pertinent to the particular problem with which the applicant was concerned, in order to be relied upon as a basis for rejection of the claimed invention. See *In re Oetiker*, 977 F.2d 1443, 24 USPQ2d 1443 (Fed. Cir. 1992). In this case, the art of Seok et al is directed to a switching system connecting to a light source and a detector wherein the detector is used to show the status of the light source on the basis of a switching operation. See columns 1-3. The use of a light source system having two light sources (40, 42) whose operation is controlled by an interface (44) or a switch (23) wherein one of the light source is ON while the other is OFF based on a particular illumination is clearly disclosed by the primary reference, Bawolek. While he does not clearly disclose the use of a detector for detecting the ON or OFF state of a light source, however, it would have been obvious to one skilled in the

Art Unit: 2872

art to use a detecting system having a detector for detecting whether a light source is ON or OFF for the purpose of informing a user the ON or OFF status of a light source in a system to avoid the confusion to a user of a system in controlling the operation of the system. One of such a detecting system is provided by Seok et al. Applicant should further note that the test for obviousness is not whether the features of a secondary reference may be bodily incorporated into the structure of the primary reference; nor is it that the claimed invention must be expressly suggested in any one or all of the references. Rather, the test is what the combined teachings of the references would have suggested to those of ordinary skill in the art. See *In re Keller*, 642 F.2d 413, 208 USPQ 871 (CCPA 1981).

In response to applicant's argument that the examiner's conclusion of obviousness is based upon improper hindsight reasoning, it must be recognized that any judgment on obviousness is in a sense necessarily a reconstruction based upon hindsight reasoning. But so long as it takes into account only knowledge which was within the level of ordinary skill at the time the claimed invention was made, and does not include knowledge gleaned only from the applicant's disclosure, such a reconstruction is proper. See *In re McLaughlin*, 443 F.2d 1392, 170 USPQ 209 (CCPA 1971).

Conclusion

9. This application contains allowable claims 18-21 and 34-35 and objected claims 31-33. However, the application still contains claims 22-24 which direct to an invention non-elected with traverse in the reply filed on 11/29/2004. Applicant should cancel the

noted claims or take other appropriate action (37 CFR 1.144) in response to this Office action.

10. **THIS ACTION IS MADE FINAL.** Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

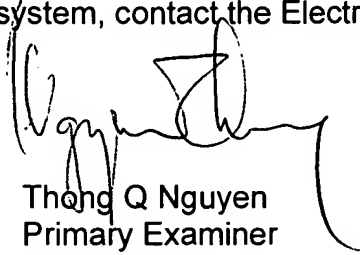
A shortened statutory period for reply to this final action is set to expire THREE MONTHS from the mailing date of this action. In the event a first reply is filed within TWO MONTHS of the mailing date of this final action and the advisory action is not mailed until after the end of the THREE-MONTH shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the mailing date of this final action.

11. Any inquiry concerning this communication or earlier communications from the examiner should be directed to Thong Q. Nguyen whose telephone number is (571) 272-2316. The examiner can normally be reached on M-F.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Drew A. Dunn can be reached on (571) 272-2312. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Art Unit: 2872

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).



Thong Q Nguyen
Primary Examiner
Art Unit 2872
